




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

May 27, 2012

MEMORANDUM FOR: Janet M. Golrick, Associate Deputy Assistant Secretary for
Multifamily Housing Projects, Office of Housing, HT

FROM:  Althea M. Forrester, Associate General Counsel for Assisted
Housing and Community Development, Office of General
Counsel, CAHB

SUBJECT: Lincoln Fields Apartments: Applicability of the Uniform Relocation
Assistance and Real Property Acquisition Policies Act of 1970

This memorandum responds to your request for legal advice concerning the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), Pub. L. No. 91-646, as amended, *codified at* 42 U.S.C. §§ 4601-4655, to seventeen former households that moved from Lincoln Fields Apartments after receiving termination notices and/or participating in an unauthorized "cash-for-keys" arrangement. Based upon a review of the facts and law, in our view, the URA applies and the former tenants are eligible for relocation assistance.

Lincoln Fields Apartments (the "property") is a multifamily rental housing property in Miami-Dade County, Florida, currently owned by SP Lincoln Fields LP. All units in the property are subsidized through a project-based Section 8 housing assistance payments ("HAP") contract executed in 1983 and renewed in 2005 pursuant to 24 C.F.R. part 881. A Purchase and Sale Agreement was executed on January 10, 2011, for Lincoln Fields Apartments. In preparing for the acquisition, SP Lincoln Fields LP submitted a Purchaser's Letter to HUD on June 10, 2011, in which it, among other things, requested that the Department approve an assignment of the HAP contract from the seller of the property to SP Lincoln Fields LP. The letter stated that SP Lincoln Fields LP's motivation for acquiring the property was "to enable [it] to complete a low income housing tax credit transaction including significant renovations, ensuring the Project's long term viability as an affordable housing asset." SP Lincoln Fields LP's draft "Tenant Temporary Relocation and Security Plan," executed on August 22, 2011, reiterated this purpose. On October 21, 2011, SP Lincoln Fields LP acquired the property. Simultaneously, the seller assigned the HAP contract to SP Lincoln Fields LP with the approval of the Director of HUD's Miami Multifamily Program Center.

SP Lincoln Fields LP's management agent informed all tenants in writing about the acquisition and rehabilitation and encouraged them to attend a meeting held on October 12, 2011. Immediately upon the transfer in ownership of the property, several new protocols were implemented. First, the management agent distributed advertisements soliciting the participation of tenants that were willing to accept a cash payment to vacate the property. Tenants that accepted the offer executed a lease rescission agreement. This "cash-for-keys" arrangement was not authorized under the HAP contract. Second, the management agent ordered background checks of all tenants.

Tenants whose background checks yielded any criminal arrests or convictions, including those several years old, were notified that their leases would be terminated. These tenants were also offered cash payments to vacate the property in lieu of defending an eviction action. News media recounted tenants' complaints of orders to vacate without going through the legal eviction process. See "Lincoln Fields Apt. Residents Claim Harassment," CBS4 Miami, Nov. 17, 2011, *available at* <http://miami.cbslocal.com/2011/11/17/lincoln-fields-apt-residents-claim-harassment/>. Third, a heavy security presence was established at the property, including unit inspections carried out with police escort.

On February 14 and 16, 2012, respectively, HUD received two letters from Legal Services of Greater Miami, Inc., ("LSGMI") requesting a case review of two former tenants that received the termination notices and accepted the "cash for keys" offer. In both letters, LSGMI stated that the employees of the property pressured the tenants into accepting cash payments and encouraged them not to seek legal advice from LSGMI. Both former tenants seek to have their tenancies at the property reinstated. Several other tenants relocated from the property in exchange for financial compensation through a "cash-for-keys" arrangement. In total, seventeen households, including those having tenants threatened with eviction for criminal violations and those that participated in the "cash-for-keys" arrangement, left the property in exchange for a cash payment. To HUD's knowledge, none of these tenants was offered in writing an opportunity to lease and occupy a decent, safe, and sanitary unit in the property upon project completion. Rehabilitation work on the property is ongoing and remaining tenants are being temporarily relocated on-site to allow that effort to continue.

Scope of Program or Project

The URA requires that a displacing agency provide relocation assistance to a "displaced person," which is defined, in relevant part, as:

"[A]ny person who moves from real property, or moves his personal property from real property –

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken ... with Federal financial assistance; or

(II) on which such person is a residential tenant ... as a direct result of rehabilitation ... under a program or project undertaken ... with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent."

42 U.S.C. § 4601(6)(A)(i). The URA regulations further define "displaced person" to include "any person who moves from the real property or moves his or her personal property from the real property. . . . [a]s a direct result of ... the initiation of negotiations for, or the acquisition of, such real property ... for a project... or [a]s a direct result of rehabilitation or demolition for a project." 49 C.F.R. § 24.2(a)(9)(i)(A)-(B). A crucial element of the definition of "displaced person" is that the displacing activity, including acquisition or rehabilitation, must occur *for a project*. The term

“project” is defined as “any activity or series of activities undertaken ... with Federal financial assistance *received or anticipated in any phase of an undertaking* in accordance with the Federal funding Agency guidelines.” 49 C.F.R. § 24.2(a)(22)(emphasis added). In turn, “federal financial assistance” is defined, in relevant part, as “a grant, loan, or contribution provided by the United States.” 49 C.F.R. § 24.2(a)(13).

Project-based Section 8 housing assistance payments are federal financial assistance for purposes of the URA. In terms of a displacing activity, there is no question that acquisition and rehabilitation occurred. Neither the acquisition nor rehabilitation activities are financed directly with federal funds. Nonetheless, whether the URA applies does not depend upon whether federal funds pay for the displacing activity, but whether federal financial assistance is received or anticipated in any part of the program or project that causes the displacement. See, e.g., Lake Park Home Owners’ Assoc. v. U.S. Dep’t of Housing and Urban Dev., 443 F. Supp. 6, 9 (S.D. Ohio 1976)(“The [URA] statute turns on whether there is federal funding of the program or project, not whether federal funds can be traced directly to the acquisition of a particular parcel of real estate”). The core issue, therefore, is whether the acquisition, rehabilitation, and assignment of the Section 8 housing assistance payments are part of the same undertaking.

HUD’s Relocation Handbook provides additional clarification:

“When federal financial assistance is used for any activity or in any phase of a project, planned or intended, and the activities are determined to be interdependent, the statutory and regulatory requirements of the URA and the specific HUD funding source(s) are applicable. Interdependence is best determined by whether or not one activity would be carried out if not for another. As a result, any activity ‘in connection with’ a federally funded project can be subject to all regulations of that funding source even though the activity may not be directly funded by that source.”

HUD Handbook 1378, ¶ 1-4(DD). In this regard, the displacing agency, SP Lincoln Fields LP, has made clear that the acquisition, assignment of the HAP contract, and rehabilitation are interdependent activities. Said differently, they are part of the same undertaking.

Whether activities are interdependent such that they are part of a single project is a fact-specific inquiry. One factor, among others, in this assessment is time. A negligible time gap between the receipt of federal funding and the displacing activities weighs in favor of interdependence. This is consistent with HUD regulations governing the provision of section 8 subsidies in connection with the disposition of HUD-owned multifamily dwellings as well as prior opinions from this office concerning the URA and section 8 project-based assistance. See e.g., 24 C.F.R. § 290.17(d)(applying the URA to displacements resulting when federal financial assistance is provided in connection with the purchase, demolition, or rehabilitation of a multifamily property by a third party); Letter from Monica Hilton Sussman, Deputy General Counsel for Program and Regulations (Mar. 25, 1994)(explaining the URA’s applicability when section 8 housing assistance payments are provided to a new property owner undertaking repairs that will require temporary relocation of existing residents)(letter on file with OGC/OAHCD).

Nonetheless, as demonstrated in Massie v. U.S. Dep't of Housing and Urban Dev., 620 F.3d 340 (3d Cir. 2010), time alone is not a dispositive element. In Massie, HUD relocated multifamily tenants for health and safety reasons after abating the section 8 HAP contract. Two years later, HUD sold the foreclosed property to a redevelopment authority and provided the authority with federal grant funding for redevelopment. The Third Circuit found that all displacements, including those occurring nearly two years before the new property owner's acquisition and rehabilitation activities, were part of a single federally-funded project. Its finding rested on documentation indicating that prior foreclosure proceedings were initiated to further the prospective redevelopment.

In the present case, the seller of the property assigned the section 8 HAP contract concurrently with SP Lincoln Fields LP's acquisition of the property in October 2011. Rehabilitation work started the following month. Even before the closing date, the connection between the displacing activities and anticipation of federal funding was already well-established. SP Lincoln Fields LP had requested that HUD consent to the HAP contract assignment in its Purchaser's Letter which stated SP Lincoln Fields LP's intention to acquire the property and rehabilitate it. Additionally, tenants received notification on or before the closing date that a new owner would be acquiring the property for the purpose of rehabilitation. The slim time gap between the acquisition, assignment of the HAP contract, and commencement of rehabilitation supports other facts that show these activities are interdependent and, thus, all part of a single project.

Timing of Tenant Moves

Having found a single project, the next question is *when* the URA attaches to the project. The date of "initiation of negotiations" ("ION date") is an important benchmark since a person that moves before this date is generally considered to be a person not displaced. See 49 C.F.R. § 24.2(a)(9)(ii)(A). HUD guidance further provides that the ION date is the "trigger for issuance of the Notice of Eligibility for Relocation Assistance or Notice of Nondisplacement." See HUD Handbook 1378, ¶ 1-4(T). As stated earlier, a "displaced person" includes a tenant that moves as a direct result of the initiation of negotiations for a project. See 49 C.F.R. § 24.2(a)(9)(i). The term "initiation of negotiations" is defined at 49 C.F.R. § 24.2(a)(15). Subject to the exclusions discussed below, a person who occupies real property and is not in unlawful occupancy on the date of initiation of negotiations is presumed to be entitled to URA assistance. See 49 C.F.R. § 24.206(a). HUD guidance further clarifies that it is generally presumed that "a permanent, involuntary move on or after that date is a displacement 'for the project'" See HUD Handbook 1378, ¶ 1-4(I)(2).

HUD considers that a tenant's move is involuntary if the tenant is not provided with information necessary to make a reasoned assessment about his options:

"If a person does not qualify as a displaced person ..., HUD policy requires that such persons be provided with a Notice of Nondisplacement ... to advise them of the Agency's determination and their right to appeal. If continued occupancy is possible upon

completion of the project, the notice must explain the reasonable terms and conditions under which the person may continue to lease and/or occupy the property upon completion of the project. If a person moves permanently from the property after ION, and the person has not been provided with a Notice of Nondisplacement, HUD's view is that the person will usually qualify as a 'displaced person.' Even if there was no intention to displace the person, if they were not given timely information essential to making an informed judgment about a move, it is assumed that the person's move was an involuntary move caused by the project."

Id., at ¶ 2-3(D). In short, "[t]enants who occupy property that may be acquired amicably ... must be fully informed as to their eligibility for relocation assistance." 49 C.F.R. part 24, App. A, § 24.2(a)(15)(iv).

Tenants at Lincoln Fields Apartments were notified in writing on October 21, 2011, that the property had been purchased by a new owner and that rehabilitation work would soon begin. The notice further advised that tenants would receive a follow-up letter regarding a certification appointment, but did not describe the terms and conditions under which tenants could remain in the project. We are unaware of any additional correspondence in which this information was communicated before the former tenants in question moved. Instead, the "termination of tenancy" letters were issued. After careful consideration of the facts before us and subject to our discussion on eviction for cause and temporary relocation below, we believe the URA applies to the relocations of the former tenants from Lincoln Fields Apartments.

Eviction for Cause and Temporary Relocation

A tenant that otherwise satisfies the definition of "displaced person" may nonetheless be considered a "person not displaced" if any of several enumerated regulatory exceptions apply. These exceptions include, "[a] person who has been evicted for cause, under applicable law, as provided for in § 24.206." See 49 C.F.R. § 24.2(a)(9)(ii)(K). URA regulations state that an "eviction for cause must conform to applicable State and local law." See 49 C.F.R. § 24.206(a). As we understand, neither the termination notices based on past criminal records nor the "cash for keys" payments constitute evictions obtained in accordance with state and local law.

Additionally, the designation of "person not displaced" includes "[a] person who is not required to relocate permanently as a direct result of a project." See 49 C.F.R. § 24.2(a)(9)(ii)(D). Most tenants of Lincoln Fields Apartments have retained their tenancy. The tenants are being required to temporarily relocate to allow the rehabilitation project to continue, but will not be permanently relocated. If these temporary relocations are conducted in accordance with the requirements at 49 C.F.R. part 24, App. A, § 24.2(a)(9)(ii)(D), then they will not result in tenants becoming eligible for permanent relocation assistance under the URA. If, however, these tenants have not received adequate notices or their temporary relocation is non-compliant with the applicable regulatory requirements, then tenants that move from the property may incur additional relocation assistance liabilities for the project.

In summary, the acquisition, rehabilitation and assignment of the HAP contract at Lincoln Fields Apartments constitutes a single federally-funded project for purposes of the URA. Any tenants that moved from the property after the applicable ION date without receiving adequate information regarding the reasonable terms and conditions under which they could continue to lease and occupy the property upon project completion are potentially eligible to claim permanent relocation assistance under the URA.

If you have any further questions or concerns, please contact Brian Stecker or Keisha Brooks, of my office, at (202) 708-2027. Thank you.